

Application No. 09/986,739
Amendment dated December 31, 2003
Reply to Office Action of October 1, 2003

REMARKS/ARGUMENTS

In the specification, paragraph [0018] has been amended.

Claims 1 - 49 remain in this application. Claim 28 has been amended.

In the Office Action, the Examiner has rejected all of the claims based on the allegation that they are either anticipated or rendered obvious by United States Patent 3,368,644 to Henderson. It is the Applicant's respectful submission that none of the claims is anticipated or rendered obvious by the Henderson patent.

In the first place, the Examiner states in paragraph 4 that Henderson discloses an earpiece of a communication device. What the Applicant has claimed in claim 1 - 20 is a communications earpiece. In claim 21 - 42 the Applicant has claimed a communications device which includes a communications earpiece, an acoustical conduit, an acoustical chamber, a miniature speaker and a plug connected to the miniature speaker for connecting the communications device to a radio. What Henderson discloses, pure and simple, is a hearing aid. Communications earpieces of the type claimed are quite different in their basic concept compared with an earpiece of an hearing aid. The earpiece 20 of Henderson is not a communications earpiece at all, but rather a hearing aid earpiece.

The Henderson device is intended to help the hearing impaired by amplifying the surrounding sounds through a hearing aid and then deliver the amplified sound to the ear through a custom fitting earpiece. The earpiece of Henderson depends upon sealing the air from the outside sound sources,

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then delivering an amplified signal using the external components of the hearing aid. This is to be compared with devices similar to the present invention where the hearing of the ear should not be completely occluded as discussed in paragraphs 4 and 5 of the present application for example. In Henderson the venting of the earpiece is restricted in an attempt to modify frequencies so the wearer will benefit with increased volume in the frequencies the wearer has lost. With hearing aids such as disclosed in Henderson, there may be a secondary vent to attempt to balance the sound.

A communications earpiece as claimed in claim 1 or a communications device as claimed in claim 21 differs greatly from Henderson in design and function. The purpose of the invention is to deliver a two way radio transmission to the ear. It is not useful for the hearing impaired, but rather is designed to assist police and other wearers in hearing their radios. The filter in the earpiece is designed to limit the volume of the audio transmission reaching the ear so that the wearer will not suffer hearing loss and possibly need the Henderson hearing aid. Simply put, such communications earpieces are for persons with normal hearing and not the hearing impaired.

Furthermore, communications earpieces and communications devices according to the invention are designed to allow the wearer to hear surrounding sounds. By comparison, Henderson is designed to occlude (block) the ear. This is very critical as the wearer needs to hear what is going on around him or her to reduce the risk of being "blind sided" while doing his or her job.

A further benefit of the present invention is through its electronic interface which makes communications private compared to the normal speaker. Henderson has no application at all to this condition. However this is critical for police in order not to alert people in their immediate vicinity about sensitive police information. However, transmissions are received by the police officer at various volume levels, so it is critical to have a device such as claimed in the present invention, that

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limits the maximum volume of the radio transmission to the officers ear. Nothing in the Henderson patent suggests that the device produces this result.

The Examiner states in paragraph 5 that Henderson discloses an earpiece having a tubular member shaped to fit an ear canal. This is literally true because a close fit is necessary to contain the volume produced by the amplifier of a hearing aid. The earpiece of the present invention is not intended to seal the ear canal. In fact that could place the police officer in a dangerous situation by effectively making him or her deaf to the surrounding sounds when the earpiece is worn.

The patent to Henderson discloses a "Libby Horn" which the Examiner refers to as a narrowing member. However this is not a "filter" to control the maximum volume reaching the ear, but rather is a device to tune the earpiece. The Libby Horn is common in hearing aids.

The present invention is designed to prevent hearing loss and allow an officer to perform his or her job safely without the risk of radio messages being overheard. Henderson is for the use of a person who is hearing impaired to help this person function in a sound filled world.

In brief, all of the claims 1 - 42 distinguish the invention from the prior art by claiming, in the claims 1 - 20, a communications earpiece. Henderson is not a communications earpiece, but a hearing aid. In the case of claim 21, as well as claims 22 - 42 dependent thereon, Henderson does not disclose a communications device comprising a communications earpiece, an acoustical conduit connected to the earpiece, an acoustical chamber member connected to the acoustical conduit, a miniature speaker connected to the acoustical chamber member and a plug connected to the miniature speaker for connecting the communications device to a radio.

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The Examiner states in paragraph 5 that "Henderson does not teach a radio plug as claimed. Since providing a suitable means to connect the communications device to a radio is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable mean (sic), such as a radio plug or a wireless connecting means for the communications device, in order to allow the user to hear directly or non-directly from a radio."

This sentence shows a misconception of the nature of Henderson. As stated above it is not a communications earpiece, but rather a hearing aid earpiece. The Examiner shows no reference which would make it obvious to connect a hearing aid earpiece to a radio. As stated above, the nature of a hearing aid earpiece is inherently different from a communications earpiece as claimed in the present invention. One cannot turn a hearing aid earpiece into a communications earpiece simply by connecting it to a radio. At least if one does, then one does not achieve the results of the present invention which is to limit the volume of the radio transmission reaching the ear. The purpose of hearing aids is to amplify sound, not to reduce the sound as does the present invention.

Moreover, there is no justification at all for rejecting claims 10 - 19, 31 - 40 and 44 - 49 on the basis that Henderson does not have these dimensions. It is not obvious for someone skilled in the art to provide these dimensions as alleged at the bottom of page 4 of the Action. This is because Henderson is intended for an entirely different purpose and the passages are provided for providing amplified signals and tuning these signals for frequency rather than limiting the volume of acoustical signals as does the present invention. Nothing in Henderson teaches the attenuation of a acoustical signals in order to protect the hearing of users of communications earpieces or communications devices as claimed in any of the claims 1 - 42. Superficially one can look at Henderson and see passageways which narrow, for example, but Henderson does not teach the use of these passageways

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as a filter in the manner of the present invention. Accordingly, if anything, there is a presumption that Henderson does not come within the dimensions of any of the claims of the present application since it is intended for an entirely different purpose. Nor has then Examiner pointed out any prior art, nor is the Applicant aware of any prior art, which uses filters of this type for communications earpieces to attenuate the volume of acoustic signals.

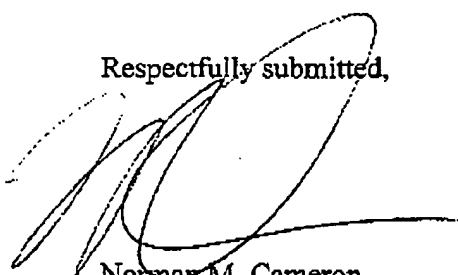
With respect to method claims 43 - 49, the Examiner mentions this claim in the third line of paragraph 5 of the Action, but does not provide any reasoning as to why this claim should be rejected. In fact there is good reason for this because the prior art does not teach a method of attenuating acoustical signals in a communications earpiece. Furthermore, it does not teach the specific dimensions set out in claims 44 - 49 which produce the desired results. How can it be obvious to utilize Henderson when Henderson is intended for an entirely different purpose and there is no teaching which would lead someone to use a hearing aid earpiece in place of a communications earpiece having an entirely different purpose?

In brief, it is submitted that none of the claims is obvious or anticipated by Henderson because Henderson relates to a different category of device and is intended for an entirely different purpose and has a considerably different structure. Utilizing the Henderson earpiece for a communications earpiece could have catastrophic results because it would occlude normal hearing which would entirely oppose to the objects of the present invention. Furthermore Henderson does not teach limiting of the volume of acoustical signals, which is the purpose of the present invention, but only tuning of the signals. There is no reason to believe that Henderson would produce the results desired by present invention, nor is there any information in Henderson of the specific configurations of a filter which would produce this result.

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In short, it is Applicant's respectful submission that the rejections should be withdrawn and the application allowed.

Respectfully submitted,



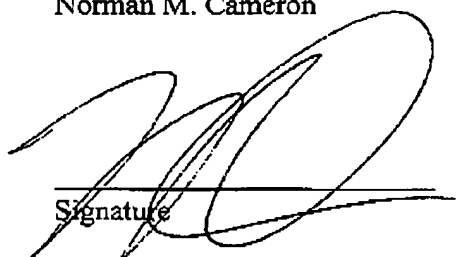
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